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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,539	03/13/2001	Diane L. Deering	D15-003-02-US	2687

22854 7590 03/10/2005

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EXAMINER

CONLEY, FREDRICK C

ART UNIT PAPER NUMBER

3673

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



## Office Action Summary

Application No. 09/805,539	Applicant(s) DEERING ET AL.	
Examiner FREDRICK C CONLEY	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,245,717 to Rudy in view of U.S. Pat. No. 777,825 to Wilkes, and further in view of U.S. Pat. No. 4,375,111 to Hall.

In reference to claim 14, Rudy discloses a blanket for substantially covering a user while the user is in a seated or supine position, the pillow blanket comprising: a substantially rectangular blanket 100 having a first surface and a second surface opposing first and second side edges that define the width of the blanket, and opposing top and bottom edges that define the length of the blanket, the blanket having an elongated middle portion with a width that is wholly divisible into the width of the blanket, the middle portion in alignment with and extending the length of the blanket along a longitudinal centerline, and a pair of apertures 111, with the apertures spaced from each other in generally horizontal alignment along either side of the longitudinal centerline of the blanket, with the apertures spaced a predetermined distance from the top edge of the blanket, and with the apertures configured and arranged to receive at least one upper appendage of a user such that the upper appendage may protrude substantially there-through from one surface of the blanket to the other surface of the blanket. Rudy fails to disclose a

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panel. Wilkes discloses a blanket having a panel (D)(fig. 1-2) with first and second side edges and top and bottom edges, with the top and bottom edges of the panel having substantially the same length, the first, second, and bottom edges of the panel being connected to the blanket, with the bottom edge of the panel being substantially coincident with the bottom edge of the blanket, and with the length of the bottom edge of the panel being substantially coincident with the width of a middle portion of the blanket, the panel and the blanket forming a pocket configured to receive at least one lower appendage of a user. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a panel as taught by Wilkes with the blanket of Rudy in order to protect the feet and ankles and prevent the robe from being displaced or disarranged at its lower end by the user arranging the blanket about the feet. Rudy also fails to disclose the middle portion of the blanket defined by longitudinal fold lines and the blanket received in the pocket when the blanket is folded in a predetermined pattern. Hall discloses a convertible mat defined by longitudinal fold lines 34 and a pocket 35 receiving the mat when folded in a predetermined pattern. It would have been obvious to employ longitudinal fold lines and pocket as taught by Hall in order to provide a compact storage arrangement which can be disposed within the interior volume of the blanket of Rudy.

Claim 17, wherein the first and second side edges of the panel are substantially the same length, and wherein the length of the first and second side edges is wholly divisible into the length of the blanket (Wilkes).

Claim 18, further comprising at least one sleeve 120, with the sleeve operatively

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connected to one of the apertures of the blanket, the sleeve configured and arranged to receive the upper appendage of a user as it protrudes through the aperture (Wilkes).

Claim 19, wherein the sleeve and the pocket are on opposite surfaces of the blanket.

Claim 20, Rudy discloses a blanket for substantially covering a user while the user is in a seated or supine position, the pillow blanket comprising:

a substantially rectangular blanket 100 having a first face and a second face, the blanket having first and second side edges that define the width of the blanket and top and bottom edges that define the length of the blanket, the blanket further comprising an elongated middle portion having a width that is about one-third the width of the blanket, the middle portion in substantial alignment with and extending the length of the blanket along a longitudinal centerline,

a pair of apertures 111 spaced a predetermined distance from the top edge of the blanket, with each of the apertures located along a horizontal center line that is generally perpendicular to the longitudinal centerline of the blanket, with the apertures spaced apart from each other along either side of the longitudinal centerline, and, a pair of sleeves 120, wherein each of the pair of sleeves includes a first end and a second end, with the first end of each sleeve operatively connected to the blanket at a respective aperture, and wherein the second ends of the pair of sleeves extend away from each other in opposite directions when the blanket is arranged in a generally planar configuration. Rudy fails to disclose a pocket. Wilkes discloses a pocket (D) having a top edge, sides, and a bottom, the pocket having an upwardly facing opening

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defined by the pocket top edge and the blanket, the pocket in substantial alignment with and extending along a portion of the longitudinal centerline, with the bottom of the pocket extending towards the bottom edge of the blanket, the pocket configured and arranged to either receive at least one lower appendage of a user. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a pocket as taught by Wilkes with the blanket of Rudy in order to protect the feet and ankles and prevent the robe from being displaced or disarranged at its lower end by the user arranging the blanket about the feet. Rudy also fails to disclose the middle portion of the blanket defined by longitudinal fold lines and the blanket received in the pocket when the blanket is folded in a predetermined pattern. Hall discloses a convertible mat defined by longitudinal fold lines 34 and a pocket 35 receiving the mat when folded in a predetermined pattern. It would have been obvious to employ longitudinal fold lines and pocket as taught by Hall in order to provide a compact storage arrangement which can be disposed within the interior volume of the blanket of Rudy.

Claim 21, wherein the pair of sleeves are located on the first face of the blanket and the pocket is located on the second face of the blanket.

Claim 22, wherein the second ends of each of the pair of sleeves extend beyond the respective side edges of the blanket.

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Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Pat. No. 5,245,717 to Rudy in view of U.S. Pat. No. 777,825 to Wilkes, U.S. Pat. No.

4,375,111 to Hall, and further in view of U.S. Pat. No. 6,219,847 to Aikins.

Claim 23, Rudy discloses all of the Applicant's claimed limitations except for at least one of the second ends of the pair of sleeves comprising an expandable cuff.

Aikins discloses a blanket with a cuff<sup>17</sup> on the ends of a pair of sleeves. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a cuff as taught by Aikins with the blanket of Rudy in order to securely cover the wrists of the user. It is well known to employ expandable fabrics in the construction of cuffs and it would have been obvious for one having ordinary skill in the art at the time of the invention to employ an expandable fabric in order to provide a cuff to provide a snug fit around the wrist of any user.

Claims 15-16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,245,717 to Rudy in view of U.S. Pat. No. 777,825 to Wilkes, U.S.

Pat. No. 3,375,111 to Hall, and further in view of U.S. Pat. No. 6,006,356 to Song.

Claims 15-16, Rudy discloses all of the Applicant's claimed limitations except for the apertures having an oblong shape and an elongated axis that is parallel to the longitudinal centerline of the blanket. Song discloses a rectangular garment having apertures (15,20) with an oblong shape. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the oblong shape as taught by Song wherein and an elongated axis that is parallel to the longitudinal centerline of the blanket of Rudy in order to receive the wearer's arms there-through.

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Claim 24, Rudy, as modified, discloses the apertures having an oblique orientation relative to the horizontal center line of the blanket (fig. 1)(Wikes). Rudy fails to disclose the apertures having an oblong shape. Song discloses a rectangular garment having apertures (15,20) with an oblong shape. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the oblong shape as taught by Song wherein and an elongated axis that is parallel to the longitudinal centerline of the blanket of Rudy in order to receive the wearer's arms there-through.

### ***Response to Arguments***

Applicant's arguments filed 12/06/04 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, such as Rudy does not disclose the article convertible between a blanket and a pillow, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Hall discloses a convertible mat defined by longitudinal fold lines 34 and a pocket 35 receiving the mat when folded in a predetermined pattern. Once the mat is received within the pocket, the bag is clearly capable of being used as a pillow. Wilkes discloses a blanket having a panel (D)(fig. 1-2) with a bottom edge connected to the blanket, with the bottom edge of the panel being substantially coincident with the bottom edge of the



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blanket, and with the length of the bottom edge of the panel being substantially coincident with the width of a middle portion of the blanket, the panel and the blanket forming a pocket.

Contrary to the Applicant's arguments, Song does disclose sleeves extending away from each other when the article is arranged in a planar configuration (fig. 5).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rudy discloses a blanket for substantially covering a user while the user is in a seated. Wilkes also discloses a blanket for covering a user while in a seated position and the combination as a whole would suggest a blanket having a pocket piece as taught by Wilkes in order to protect the feet and ankles since feet also get cold indoors.

In response to applicant's argument that Rudy as modified does not teach converting a relaxation article into a pillow, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a

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manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Furthermore, as stated above, once the mat is received within the pocket as taught by Hall, the bag is clearly capable of being used as a pillow.

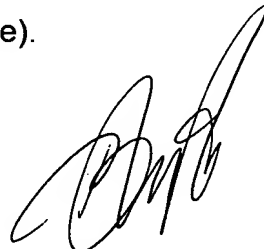
### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 703-308-7468. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



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